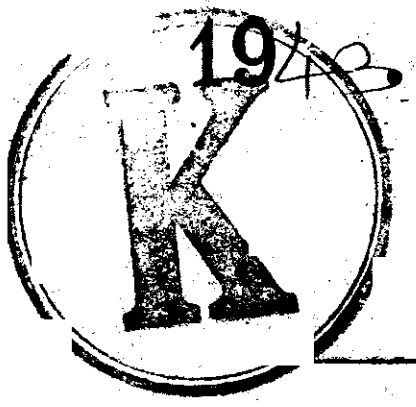


19

**File No.** O. Tobacco (Town of Bombay)/43.

Legal Department

A **BRANCH**

**Subject:—**

Opinions under the Tobacco Duty (Town of Bombay) Act, 1857

P.S. 11

**File No.** O Tobacco (Town of Bombay)/43

Gen. 194 e.

233-A

# C O N T E N T S.

Legal Department File No. O. Tobacco (Town of Bom.)/

| Sr. No. | Compilation No. | Subject | Pages |
|---|---|---|---|
| | | **Tobacco Duty (Town of Bombay) Act, 1857.** | |
| 1. | R.I.No. 2046 dt. 10/3/43.<br>O. No. 2336 dt. 30/3/43. | Whether licenses may be issued for the usual periods as proposed. | 1 - 2. |
| 2. | R.I.No. 5799 dt. 14/5/43.<br>O. No. 4367 dt. 22/6/43. | Sec. 9 --- Whether it would be legal to insist on individuals taking out permits for the transport of unmanufactured tobacco in excess of 40 tolas. | 3 - 4. |

Rele. M.S.
10/7/65.

11/7

K.S.R.
11/7

Office of the R.L.A.

For the purpose of avoiding conflict with the Central Government's taxation scheme on the lines of th proposals in Government letter, Revenue Department, No. 7733-C/39, dated 19th February 1943 at pages 177-179 ante, addressed to the Central Government it will not b sufficient to cancel all licenses of tobacco vendors under the Tobacco Duty (Town of Bombay) Act, 1857 and the Bombay (District) Tobacco Act, 1933. For while the said Acts remain in force the issue of licenses require under those Acts cannot be entirely withheld. In order to achieve administraive co-ordination, it will be necessary to repeal the said Acts. In repealing the said Acts it is a mater for legislative decision whether provision should be made for refund of all or any portion of the license fees recovered. Equitable consideration would justify such provision and since Secretary, R.D's note appears to contemplate refund of fees on the basis of repeal of the Bombay Acts, it i needless to consider whether such refund can be avoided by making the licenses terminable [illegible] at any time by an appropriate condition in license. The termination of the licenses on the basis of repeal of the Bombay Acts does not in any way curail the rights of the licensee to sell tobacco, etc. inasmuch as the repeal makes the continuance of the licenses under the Bombay Acts unnecessary for such purpose. In the absence of curtailment of the licensee's rights, he would have no claim to compensation against the Provincial Government

and the repealing Act need ~~xxx~~ only provide for refund of the proportionate license fee. Licenses may therefore be issued for the usual periods as proposed by Secretary, R.D.

Id/-

30/3.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2336,

dated the 30th March 1943.

MSR.

Office of the R.L.A.

Both the Tobacco (Excise Duty) Act, 1943 (X of 1943) and the rules made thereunder and the Tobacco Duty (Town of Bombay) Act, 1857, are valid laws which are to be given effect to. In the circumstances, the replies to the three questions of the Commissioner of Excise are that, in view of section 9 of the Tobacco Duty (Town of Bombay) Act, it would be legal to insist on individuals taking out permits for ----

(i) the transport of unmanufactured tobacco in excess of 40 tolas and up to 2 seers from one place to another within the Town and Island of Bombay in spite of the fact that an individual can under the Tobacco (Excise Duty) Rules, 1943, transport unmanufactured tobacco up to 2 standard seers from one place to another within British India without a permit;

(ii) The transport of unmanufactured tobacco in excess 2 seers from one place to another within the Town and Island of Bombay even though they may hold permits for doing so under the Tobacco (Excise Duty) Rules, 1943; and

(iii) the transport of manufactured tobacco in excess of 40 Tolas from one place to another within the Town and Island of Bombay even though no restrictions have been placed on the transport of manufactured tobacco under the Tobacco (Excise Duty) Rules, 1943.

In this connection attention is invited to paragraph 3 of R.L.A's opinion No. 74-Confl., dated the 13th February 1943, where the present difficulty was anticipated and the way to overcome it indicated

Id/-

21/6.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4367, dated the 22nd June 1943.

MSR.